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IN THE

Supreme Court of the United States

October Term, 1956

No. 308

LEO WALTON,

Petitioner,

—against—

ARABIAN AMERICAN OIL COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled action on May 15, 1956.

Opinions Below

The District Court herein filed no opinion.

The opinion of the Court of Appeals (R. 49-50) is reported in 233 F. (2d) 541.

Jurisdiction of the Supreme Court of the United States

The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254.

Date of Judgment

The judgment of the United States Court of Appeals for the Second Circuit sought to be reviewed was entered on May 15, 1956. No orders for a rehearing or extension of time within which to petition for certiorari were sought or granted.

Jurisdiction of the Federal Court

The basis of the jurisdiction of the Federal Court in the first instance was diversity of citizenship. The plaintiff Leo Walton was and is a citizen of the State of Arkansas. The defendant, Arabian American Oil Company was and still is incorporated in the State of Delaware. The defendant corporation had made an application for and was qualified to do business within the State of New York (R. 3).

Questions Presented for Review

I. When one United States citizen, while temporarily in a foreign country, suffers severe and serious injuries as a result of the negligence of another United States citizen of a different State, engaged in business in that foreign country, when that foreign country has no recognized civilized legal system, and an action is thereafter brought in the Federal Court of the United States by the injured United States citizen against the other

United States citizen as a defendant, on the grounds of diversity of citizenship, and when in that suit neither the plaintiff nor the defendant plead applicable and controlling foreign law, and the pleadings and the facts in the action are founded on the basic and fundamental tort of negligence, causing physical personal injury—should not the Trial Judge in the District Court decide the case on the general common law rule of negligence of the forum; and was not the Court in error when it dismissed the plaintiff's complaint on the ground that the plaintiff had not proven foreign "law"?

II. When, in such a case, foreign "law" is not affirmatively pleaded by the plaintiff, or pleaded by the defendant causing physical personal injury as a defense, does not the common law of tort and negligence of the forum apply; and was it not error to hold either that the plaintiff, under those circumstances, should have pleaded foreign "law", or to hold that the Trial Court should have taken judicial notice of foreign "law"?

III. Was not the Court of Appeals in error when it ruled that New York substantive law held that under the facts in this case the *lex loci* applies herein, since no New York court decision or statute is cited and when in fact there exists no New York decision or statute providing that when a *lex loci* has no civilized legal system that then *lex loci* applies, and when the only opinion relating to that factual situation states that the New York rule is similar to the Federal law, that the common law of the forum must be applied?

IV. Since the Court of Appeals was not unanimous in the reasoning of its decision that the judgment for the defendant should be affirmed, in that the Court of Appeals stated that the conclusion that the plaintiff had

the burden of showing Saudi-Arabia "law" seemed unjust to the plaintiff, and since the Circuit Judge who wrote the opinion stated that he felt that the action should be remanded,—should not the Supreme Court of the United States grant certiorari because of this conflict between the stated opinions of the judges of the Court below herein and the importance of the questions herein involved.

Statement of the Case

This suit is between two United States citizens. The plaintiff is a citizen of Arkansas (R. 3) who was temporarily employed in Saudi Arabia after his discharge from the United States Army Air Force as a pilot while still in the Near East and before his return to his own country. The defendant Arabian American Oil Company is a United States corporation of the State of Delaware (R. 3) and was engaged in extensive oil operations in Saudi Arabia. The suit is based on an elementary basic and personal cause of action in tort that in no way involves the national principles of Saudi Arabia (R. 4). The country of Saudi Arabia, an absolute monarchy under the direct personal domination of a King, has no civilized system of law and no organized bar for the regulation of personal rights. All disputes are resolved by the King according to his or his designees' interpretation of the Koran, the writings of Mohammed.

This suit was tried upon pleadings framed solely on local law. Neither the plaintiff nor the defendant pleaded any foreign law. The defendant in its Answer did not set up foreign law as a defense. Even though no foreign law was relied upon by the plaintiff and the defendant did not allege foreign law as a defense, and even

though Saudi Arabia has no civilized legal system, the District Court dismissed the plaintiff's complaint on the ground that the plaintiff should have proven foreign law even though not pleaded either as a basis of the plaintiff's cause of action or as a defense. The Court of Appeals in affirming the dismissal of the complaint in effect stated that the District Judge should have taken judicial notice of non-existent law. Then even though the District Judge did not do what the Court of Appeals indicates it should have done the Court of Appeals still affirmed the dismissal of the complaint.

The Court of Appeals also states that there is much to the suggestion that the Court should apply the forum's tort rules in some circumstances and that the appellate courts should not perpetuate a contrary "doctrine which upon re-examination shows up as unwise and unjust." This is the exact proposition on which the plaintiff stands.

The plaintiff Leo Walton brought this action against the Arabian American Oil Company (hereinafter referred to as Aramco) to recover damages for very serious and disabling permanent injuries inflicted upon him in an automobile collision at Daharan, Saudi Arabia.

A truck that was owned by the defendant Aramco and driven by a native Arab who was employed as the driver by Aramco crashed head on into a vehicle driven by the plaintiff, Leo Walton.

The defendant in its Answer admits that the driver of the truck was the defendant's employee, and that the truck at the time of the collision was being driven on the business of that defendant (R. 4).

The defendant oil company's truck at the time of the impact was completely on the wrong side of the road

and the outside or left headlight of the truck was out and the inside headlight lit (R. 37).

The plaintiff was driving his vehicle on his own and proper side of the road at the time of the impact (R. 36).

Leo Walton, the plaintiff, was and is a United States citizen (R. 32) and was only temporarily in Saudi Arabia. During World War II, he had been a Lieutenant and pilot in the United States Army Air Force and was stationed in the Near East. He received his discharge from the Air Force while still overseas at Abadan, Iran (R. 32-33). Immediately upon his Air Force discharge he was hired while still in the Near East by TWA as a Senior Flight Supervisor at its Abadan Air Base in Iran (R. 33). TWA subsequently assigned him as a pilot to fly Aramco airplanes at Daharan, Saudi Arabia (R. 33). Aramco was and is a Delaware corporation and also a United States citizen (R. 2-3-6). Daharan, Saudi Arabia, was a community solely built and maintained by Aramco (R. 33).

ARGUMENT

I

The plaintiff asserts that his injuries were the result of the negligent acts of the defendant's employee and that his right to recovery is founded on the basic and fundamental doctrine of negligence, a legal wrong which may be assumed to create an obligation in any civilized country. That, therefore, the plaintiff need not allege the "law" of the country in which the occurrence took place, and the Trial Court should apply the basic and fundamental rules of common law negligence.

The facts as proven, and which are undisputed, establish that the defendant's truck was operated in an outrageously negligent and careless manner (R. 37). It hit the plaintiff's vehicle head on, it was completely on the wrong side of the road, it had only one headlight burning, and that light was on its own right or inside (the most dangerous side), in a dense fog (R. 37). As a result of this collision, the plaintiff was severely and permanently injured (R. 38-39).

These facts establish a perfect cause of action in basic fundamental negligence. The defendant was guilty of outrageous negligence, and therefore committed a tort against the plaintiff. By these acts of negligence the defendant committed a tort which is recognized as creat-

ing a fundamental right in any civilized country. The plaintiff does not plead any foreign law. The defendant does not plead or prove foreign law as a defense which it is obliged to do if it seeks to rely on foreign law.

It is unconscionable that under these circumstances when one American citizen has been injured by the wrong of another American citizen when the wrong creates a basic fundamental legal right under not only our own but under any system of law the world over, that our Federal Courts will refuse to apply the basic fundamental legal principles recognized in not only this country but under any civilized system of law the world over.

This is particularly true when the plaintiff who institutes the suit in our Federal Courts does not elect to plead, prove or rely on foreign law and where the defendant does not plead foreign law as a defense.

Under the proof and the pleadings before our Federal Court, our Court should apply the fundamental recognized common law principles of negligence in this suit between two American citizens in their own United States Court.

The absence of law or any civilized legal system in Saudi Arabia should not deprive this plaintiff of a fundamental basic right. Since he has not alleged or proved any foreign law in a basic tort action, and the defendant has not pleaded or proven that there is a specific or basic law that defeats this fundamental right of the plaintiff, the Federal Court should apply the basic legal principles of common law negligence.

The dismissal of this plaintiff's action constitutes a flagrant legal injustice in the light of to-day's civilization and the world-wide scope of United States involvement in all countries on the face of the earth.

Americans, American corporations and our civilian, military and governmental representatives are by governmental policy and direction stationed in or engaged in work in every foreign country on the face of the earth.

Some of these countries or nations have no system of law for the enforcement of even the most fundamental legal rights and obligations. Our information is that the Arab Nation of Saudi Arabia has no legal system, has no law, common or statutory and has no courts to enforce legal rights and obligations and no organized bar. Some foreign countries have adopted the English and American common law system, others have adopted the French System of Law. Saudi Arabia has adopted neither and has no legal system of its own. Saudi Arabia is ruled by a King who exists because of force majeure, a type of dictator. An individual has no rights nor form of remedy except what the King, or some person he may designate to examine a special claim, may decide and direct. When a person is injured in a traffic collision, there is no law under which he can even collect for doctor's bills, let alone lost earnings, and nothing for his injuries. Under some circumstances the King might possibly direct that a penalty that they call blood money should be imposed against the driver for his wrongful operation. Under that eventuality, the King might order that a driver's hand or arm be cut off as punishment.

The Federal decisions have held that where facts create a right or impose an obligation under basic and fundamental common law legal principles, our Courts will assume that those same facts create a right or impose an obligation in any civilized country and will therefore apply our own common law principles to an action tried in our courts.

The leading Federal case on this subject is *Cuba R. Co.* v. *Crosby*, 222 U. S. 473.

That case did not involve a simple two-car collision but involved employee relationships between the plaintiff and the defendant, and because of that complication, it was held that the foreign law or statute should have been proven. However, in that case, the Supreme Court of the United States has set down the principle which governs the case at bar and all cases in general tort.

Chief Justice Holmes set forth the rule as follows:

> "It may be that, in dealing with rudimentary contracts or torts made or committed abroad, such as promises to pay money for goods or services, or battery of the person, or conversion of goods, *courts would assume a liability to exist if nothing to the contrary appeared. Parrot* v. *Mexican C. R. Co.*, 207 Mass. 184, 34 L. R. A. (N. S.) 261, 93 N. E. 590. Such matters are likely to impose an obligation in all civilized countries." (Italics ours.)

In *The Hoxie, American Express Co., Aktieselskab* v. *United States*, 297 F. 189, at page 190, the Court said:

> "We do not find it necessary to answer either of them. There is no presumption that the law of foreign countries is unlike ours. One who would rely upon the difference between them must prove its existence. If he does not, we apply our own law to the case. *The Scotland*, 105 U. S. 24, 29, 26 L. Ed. 1001; *Liverpool Steam Navigation Co.* v. *Phoenix Insurance Co.*, 129 U. S. 397, 406, 9 Sup. Ct. 469, 32 L. Ed. 788, 2 Wharton's Conflict of Laws, S. 772, *et seq.*"

See also *National Steam Navigation Co.* v. *Dyer,* 105 U. S. 25, at 29; 26 L. Ed. 1001, at 1003:

> "In administering justice between parties it is essential to know by what law or code or system of laws, their mutual rights are to be determined. When they arise in a particular country or State, they are generally to be determined by the laws of that State. Those laws pervade all transactions which take place where they prevail, and give them their color and legal effect. Hence if a collision should occur in British waters, at least between British ships, and the injured party should seek relief in our courts, we would administer justice according to the British law, so far as the rights and liabilities of the parties were concerned, provided it were shown what that law was. *If not shown, we would apply our own law to the case.*" (Italics ours.)

The District Court in this case should therefore have applied the general common law principles of negligence and should not have ruled that the plaintiff was obligated to prove the law of Saudi Arabia or be dismissed.

The Court of Appeals in its opinion in this case has indicated the justice of the proposition that the law of the forum should apply in some circumstances, and specifically states that our Courts should not perpetuate a contrary doctrine which on re-examination proves to be unwise and unjust.

> "It has been suggested that, where suit is brought in an American court by an American plaintiff against an American defendant, complaining of alleged tortious conduct by the defendant in a foreign country, and that conduct

is tortious according to the rules of the forum, the court in some circumstances, should apply the forum's tort rules. See *Morris, The Proper Law of a Tort,* 64 Harv. L. Rev. (1951), 881 (criticizing, *inter alia, Slater* v. *Mexican National Railroad,* 194 U. S. 120). There, and in 12 Modern L. Rev. (1949) 248, Morris decries, as 'mechanical jurisprudence,' the invariable reference to the 'law' of the place where the alleged tort happened. There may be much to Morris' suggestion; and a court—particularly with reference to torts, where conduct in reliance on precedents is ordinarily absent—should not perpetuate a doctrine which, upon re-examination, shows up as unwise and unjust. Although in a diversity case a federal court must apply the 'substantive' conflict rules of the state in which the court sits, that duty perhaps does not require acceptance of state court decisions which are clearly obsolescent; see the concurring opinion of Mr. Justice Frankfurter in *Barnhardt* v. *Polygraphic Co., Inc.,* ..... U. S. (January 16, 1956), 100 L. Ed. (Advance, p. 203)."

II

Since foreign law was not affirmatively pleaded by the plaintiff or pleaded by the defendant as a defense, the common law of tort or negligence applies and it was error to hold either that plaintiff under those circumstances should have pleaded foreign law or to hold that the Court should have taken judicial notice of foreign law.

The pleadings in this action are governed by the requirements of the federal rules of pleading contained in the Federal Rules of Civil Procedure and the decided federal authorities.

Rules 8 to 12 of the Federal Rules of Civil Procedure contain the provisions applicable to pleadings.

Rule 12(b) states:

> "(b) How Presented: Every defense, *in law* or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim or third party claim shall be asserted in the responsive pleadings thereto if one is required, * * *." (Italics ours.)

The Federal Courts have consistently held that a party is required to plead foreign law if he intends to rely upon it. See *Liverpool and Great Western Steam Co. v. Phenix Ins. Co.*, 129 U. S. 397, 445, 32 L. Ed. 788:

"The law of Great Britain since the Declaration of Independence is the law of a foreign country, and, like any other foreign law, is matter of fact, which the courts of this country cannot be presumed to be acquainted with, or to have judicial knowledge of, unless it is pleaded and proved.

The rule that the courts of one country cannot take cognizance of the law of another without plea and proof has been constantly maintained at law and in equity, in England and America. *Church* v. *Hubbart*, 6 U. S. 2 Cranch, 187, 236 (2:249); *Ennis* v. *Smith*, 55 U. S. 14 How. 400, 426, 427 (14:472); *Dainese* v. *Hale*, 91 U. S. 13, 20, 21 (23:190, 193); *Pierce* v. *Indseth*, 106 U. S. 546 (27:254); *Ex parte Oridland* 3 *Ves. & B.* 94, 99; *Lloyd* v. *Gilbert*, L. R. 1 Q. B. 115, 129; S. C. 6 Best & S. 100, 142. In the case last cited, Mr. Justice Willes, delivering judgment in the Exchequer Chamber, said: 'In order to preclude all misapprehension, it may be well to add, that a party who relies upon a right or an exemption by foreign law is bound to bring such law properly before the court, and to establish it in proof. Otherwise the court, not being entitled to notice such law without judicial proof, must proceed according to the law of England."

See also *Rowan, et al.* v. *Commissioner of Internal Revenue*, 120 F. (2) 515, at 516:

"The record in this case contains no proof of what those laws are, and the rule that the courts of one country cannot take cognizance of the laws of another without plea and proof has been consistently maintained in the courts of the United States."

See also *Empresa Agricola Chicama Ltda.* v. *Amtorg Trading Corporation*, 57 F. Supp. 649, at 650:

> "Unquestionably, by virtue of Rule 43 (a), F. R. C. P., the more liberal rule for the reception of evidence relating to foreign law, now operative in the New York state courts, has become applicable in the federal courts located in New York. But no such submission to State rules of pleading, as distinguished from evidence, obtains in the federal courts under the Federal Rules of Civil Procedure. With respect to the requirements of a federal pleading, subdivision D of Section 344-a of the New York Civil Practice Act is, therefore, not controlling. The federal rule of pleading is well established. Foreign law is matter of fact which must be pleaded and proved. *Liverpool & G. W. Steam Co.* v. *Phenix Ins. Co.*, 1889, 129 U. S. 397, 445, 9 S. Ct. 469, 32 L. Ed. 788; *Rowan* v. *Commissioner of Internal Revenue*, 5 Cir., 1941, 120 F. 2d 515. Although Section 344-a has changed the character of proof admissible in this district court to prove foreign law, it has not dispensed with the necessity of pleading the foreign law, if it is to be proved."

See also the following New York cases:

Monroe v. *Douglass*, 5 N. Y. 447, at 451:

> "Although the respondent, in his answer, has made frequent reference to the laws of Scotland, and alleged that by them he acquired a right to the real estate in question; yet neither he nor the appellants have set forth or claimed in their pleadings, or proved, that the laws of Scotland

are different from our own in regard to the construction and legal effect of the testamentary settlement; nor have they averred or proved the existence, in that country, of any rule or principle of law, written or unwritten, relating to that subject, which, on comparison, appears different from our own.

"It is a well-settled rule, founded on reason and authority, that the *lexi fori,* or, in other words, the laws of the country to whose courts a party appeals for redress, furnish, in all cases, *prima facie,* the rule of decision; and if either party wishes the benefit of a different rule or law, as, for instance, the *lex domicilii; lex loci contractus;* or *lex loci rei sitoe;* he must aver and prove it. The courts of a country are presumed to be acquainted only with their own laws; those of other countries are to be averred and proved, like other facts of which courts do not take judicial notice; and the mode of proving them, whether they be written or unwritten, has been long established."

Also see *Savage* v. *O'Neill,* 44 N. Y. 298, at 300:

"There is no proof what the laws of Russia in reference to the property rights of married women were, and there is no presumption that the common law was in force there. Such a presumption is indulged by our courts only in reference to England and the States which have taken the common law from England. The courts cannot take notice of the laws of Russia unless they are proved, and in the absence of proof our own law must of necessity furnish the rule for the guid-

> ance of our courts. (*Monroe* v. *Douglass*, 5 N. Y. 447; 2 Cowen & Hills's Notes, Van Cott's ed., 326, 327.) Hence in any view, the law of this State, in reference to the property and rights of married women, must furnish the rule for the decision of this case."

The Federal pleading requirement that foreign law must be pleaded is not in any way relaxed, repealed or amended by any provision of the New York Civil Practice Act.

Although Rule 43(a) of the Federal Rules of Civil Procedure provides that in the Federal courts the more liberal rule for the reception of evidence applies, whether Federal or State, that rule only governs the manner and method of the reception of evidence, and in no way affects the rule of pleading.

Since the Federal Rules of pleading require foreign law to be pleaded, any evidence on foreign law cannot be received in evidence in any form or by any method, unless that foreign law is made competent and material as evidence by the pleadings. If the foreign law is not pleaded, it is incompetent and irrelevant as evidence.

Section 344(a) of the New York Civil Practice Act may be considered by the Federal Court, not as a rule of pleading, but only as a rule governing the manner and method of introducing evidence which is material and competent. If evidence is not competent under the Federal Rules of pleading, it cannot be received under 344(a) or under any other method, and in this case evidence of foreign law was not competent under the pleadings in the case, and it was error to hold that the plaintiff should have proven foreign law or the Court should have taken judicial notice of it.

III

The Court of Appeals was in error when it held that New York substantive law holds that under the facts in this case the LEX LOCI applies. No New York case is cited and the plaintiff has been unable to find a case which holds that when a LOCI or PLACE has no civilized legal system, that country's law applies. The only opinion relating to that factual situation indicates that the New York rule is similar to the Federal rule that the common law of the forum should be applied.

The opinion of the Court of Appeals (1462) bases its decision, in part, upon the statement and assumption that New York decisions hold that the substantive law applicable to an alleged tort is the law of the place where the alleged tort occurred, and cites the one case of *Conklin* v. *Canadian-Colonial Airways, Inc.*, 266 N. Y. 244.

The plaintiff submits that neither that case nor any of the New York cases on that subject are determinative of the issue presented here because nowhere in the cited case, or in any case the plaintiff can find, do New York courts hold that when a tort occurs in a place that has no civilized legal system, the plaintiff's rights are to be determined by the "law" of that place. The case cited, and other New York cases, have only dealt with situations where there is a dispute as to the law of the State of trial and the law of some other State of the United States, or of some other place with a civilized legal system.

The *Conklin* case involved a dispute as to a contract on an airline ticket where the question presented was whether New York or New Jersey law applied.

Cases of that type are not determinative of the question presented herein.

In fact, the New York case that considers the question involved in this appeal is the case of *Arams* v. *Arams*, 182 Misc. 328, where the Court adopted language identical with what the plaintiff contends the Federal rule to be herein. At page 335 the Court said:

> "Taking all the cases together, I think the correct rule in relation to suits here upon contracts made or torts committed in States or countries which have not adopted or inherited the common law may be formulated thus: Where the complaint alleges facts which fairly may be assumed to create an obligation under the law of any civilized country, the plaintiff need not specifically allege the law of the State or country in which the things relied upon as giving rise to the asserted obligation took place, considerations of justice and convenience making it proper in such cases to cast upon the defendant the burden of showing, if that be the fact, that the law of such State or country is contrary to that assumption."

The Supreme Court of Massachusetts, reviewing and commenting on the law of the State of New York, in *Parrot* v. *Mexican Central Railway Co.*, 207 Mass. 184, said:

> "There is every reason why they should be presumed to recognize fundamental principles of

right and wrong which lie at the foundation of human society, and to hold that a direct violation of these principles, to the injury of another person, creates a legal liability. If one should sue on a contract for goods sold and delivered in France, upon a promise to pay a certain price for them, it would seem unreasonable that a plaintiff should be obliged to bring evidence from that country that a breach of such a contract there creates a liability. So if one should sue for damages suffered from an assault and battery, or from a larceny committed there, there ought to be a presumption from common knowledge that a liability exists everywhere in such cases.

"Some courts have gone further, and have held that, in the absence of any proof of the foreign law, the court will administer the law of its own jurisdiction. This is the law in New York, and in the Supreme Court of the United States. *Hynes* v. *McDermott*, 82 N. Y. 41. *The Scotland*, 105 U. S. 24, 29, 30."

See *Hynes* v. *McDermott*, 82 N. Y. 41, at 47:

"But this question we need not decide. There is no proof of what is the law of marriage in France, and we will not presume that it is different from that of this State. (*Monroe* v. *Douglass*, 5 N. Y. 447; *Savage* v. *O'Neil*, 44 id. 298). There is no proof of the nationality of the vessel in which the parties crossed the channel, and we will not presume that it was that of a country whose law of marriage has been proved in this case to be different from that of this State; even if we are required to hold that a vessel on the seas has with it the law of marriage of the nation whose flag it flies."

II

The Court of Appeals was not unanimous in the decision that the judgment for the defendant should be affirmed. The opinion of the Court of Appeals states that the conclusion that the plaintiff had the burden of showing Saudi Arabia "Law" seems unjust. The Circuit Judge who wrote the opinion stated that the action should be remanded. Because of this conflict, certiorari should be granted and the decision reversed.

In Points I, II and III of this brief the petitioner cites authority to demonstrate that the common law should apply, and that the plaintiff should not have been required to prove the "law" of the foreign jurisdiction under the facts and the pleadings of this case.

Although the majority of the Court of Appeals held that the plaintiff, under their interpretation of the law, was required to prove the "law" of the foreign jurisdiction, the opinion specifically states that that conclusion seems unjust to this plaintiff:

> "This conclusion seems unjust for this reason: Both the parties are Americans. The plaintiff was but a transient in Saudi Arabia when the accident occurred and has not been there since that time. The defendant company engages in extensive business operations there, and is therefore in a far better position to obtain information concerning the 'law' of that country. But, under the New York decisions which we must follow, plaintiff

> had the burden. As he did not discharge it, a majority of the court holds that the judge correctly gave judgment for the defendant."

Your petitioner submits that certiorari should be granted to review the decision when the Court of Appeals rendering the decision itself states that the conclusion on which the decision is based "seems unjust",—a position consistently maintained by this petitioner.

The writer of the Court of Appeals opinion, in addition, stated that the case should have been remanded, and therefore the judgment of dismissal should not have been affirmed:

> "The writer of the opinion thinks we should remand for this reason: Apparently neither the trial judge nor the parties were aware of New York Civil Practice Act, Section 344-a; consequently, in the interests of justice, we should remand with directions to permit the parties, if they so desire, to present material which may assist the trial judge to ascertain the applicable 'law' of Saudi-Arabia."

The petitioner in this application for certiorari also contends that the case should be remanded so that he be permitted a trial on the issues as presented.

CONCLUSION

Wherefore the petitioner prays that this petition be granted, and that a Writ of Certiorari issue.

Respectfully submitted,

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